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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,618	11/30/2001	David Stein	1136/032	4922
7590	07/05/2005			
EXAMINER				NGUYEN, KIEN T
ART UNIT		PAPER NUMBER		
3714				

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/998,618	STEIN, DAVID
	Examiner Kien T. Nguyen	Art Unit 3714

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(e). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 31 March 2005.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1,2,5,24,25,29,35,44 and 46-48 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2,5,24,25,29,35,44 and 46-48 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 24-25, 29, 35, 44, 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan U.S. Patent 6,449,460 in view of Kramer U.S. Patent 5,607,339.

Logan disclosed a teaching method and kit comprising a song book having a plurality of pages (18) inherently made of paper-thin materials, with each page containing song lyrics (24), a binder connects the pages together; the song book also includes a recording medium as shown in Figs. 5 and 7. It is noted that Logan failed to teach the pages are waterproof and support means for supporting the pages in a shower enclosure. However, as noted in the specification of the present application, singing in a shower enclosure is very well known and countless number of people had done it for a long time. Kramer disclosed a bath toy comprising at least one sheet material (15) made from flexible water-proof material such as polymer plastic (see column 1, lines 40-42; and column 2, lines 39-41); the sheet (15) is removably attached to a shower surface (12) solely by a layer of water (24) (see Fig. 3) wetted at least one page and located between the page and the shower surface for selectively attaching the page to the surface by water adhesion as shown in Fig. 1. Therefore, it would have been obvious to one of ordinary skill in the art to modify the pages of Logan with the

teaching of waterproof page and supporting means for attaching the pages to the shower as taught by Kramer for the advantage of providing a wider usage of the singing teaching device of Logan.

Regarding claims 25, and 29, it would have been a matter of design choice to make the song in any desired size and shape to accommodate any particular user.

Regarding claim 44, it is noted that the combination of Logan and Kramer does not explicitly teach the step of sliding the page along the shower surface as set forth in these claims. However, a wide range of users such as adult and/or children may use the combination of Logan and Kramer and a thin water layer is the sole adhesion means for removably attaching the page to the shower surface. Therefore, it would have been obvious to one of ordinary skill in the art to slide the page of the combination of Logan and Kramer along the shower surface to accommodate any specific user.

#### ***Response to Arguments***

In response to applicant's argument regarding the "shower surface" of Kramer is merely a wall beside the bathtub and it is nearly dry instead of "Shower enclosure means the vertical surfaces surrounding a shower head", a bathtub is conventionally accompany with a shower head and/or faucet and that is an undeniable fact, whether such surface is a streaming surface is merely an intended use of the user. A wall in a shower enclosure inherently has water thereon. Therefore, such argument is not persuasive.

In response to applicant's arguments against the references individually regarding Kramer as set forth on pages 10-12 of the Remarks, one cannot show

nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that Kramer does not teach a book and Logan's ring binder and it cannot sufficiently flatten to be supported by water adhesion, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kien T. Nguyen whose telephone number is (571) 272-4428. The examiner can normally be reached on 7:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jessica Harrison can be reached on (571) 272-4449. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kien T. Nguyen  
Primary Examiner  
Art Unit 3714

Ktn